



DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

A-533-840

Certain Frozen Warmwater Shrimp from India: Notice of Court Decision Not in Harmony with the Results of Antidumping Administrative Review; Notice of Amended Final Results

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: On September 20, 2021, the U.S. Court of International Trade (CIT or the Court) issued its final judgment in *Calcutta Seafoods Pvt. Ltd., Bay Seafood Pvt. Ltd., and Elque & Co. v. United States*, Court No. 19-00201, sustaining the Department of Commerce (Commerce)'s remand results pertaining to the administrative review of the antidumping duty (AD) order on certain frozen warmwater shrimp (shrimp) from India covering the period February 1, 2017, through January 31, 2018. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final results of the administrative review and that Commerce is amending the final results with respect to the dumping margin assigned to Calcutta Seafoods Pvt. Ltd., Bay Seafood Pvt. Ltd., and Elque & Co. (collectively, the Elque Group).

DATES: Applicable September 30, 2021.

FOR FURTHER INFORMATION CONTACT: David Crespo, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3693.

## SUPPLEMENTARY INFORMATION:

### Background

On October 29, 2019, Commerce published its *Final Results*.<sup>1</sup> During the course of the administrative review, Commerce found that the Elque Group reported unclear and inconsistent product specification data and failed to respond adequately to certain questions contained in the original and supplemental questionnaires issued by Commerce. As a result, Commerce was not able to rely on the Elque Group's data as reported in order to calculate a dumping margin for the Elque Group. Commerce determined that the Elque Group: (1) withheld requested information; (2) failed to provide information in the form or manner requested by Commerce; and (3) significantly impeded the proceeding.<sup>2</sup> For these reasons, in determining the Elque Group's dumping margin, Commerce applied adverse facts available (AFA), pursuant to section 776(b) of the Tariff Act of 1930, as amended (the Act).<sup>3</sup>

On February 3, 2021, the Court remanded aspects of the *Final Results* to Commerce for further consideration. Specifically, the Court held that Commerce's application of AFA to the Elque Group was unlawful because Commerce did not provide the Elque Group adequate assistance or consider its difficulties as a small company, as required by section 782(c) of the Act. In its decision, the Court remanded the *Final Results* to Commerce to recalculate the Elque Group's dumping margin, by either: (1) reopening the record and procuring additional information; or (2) applying neutral facts available. In the Remand Redetermination, Commerce applied neutral facts available to the Elque Group's reported data to calculate a dumping margin.<sup>4</sup> On September 20, 2021, the CIT sustained Commerce's Remand Redetermination.<sup>5</sup>

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<sup>1</sup> See *Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review; 2017–2018*, 84 FR 57847 (October 29, 2019) (*Final Results*).

<sup>2</sup> See *Certain Frozen Warmwater Shrimp from India: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018*, 84 FR 16843 (April 23, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM) at 11, unchanged in the *Final Results*.

<sup>3</sup> See *Preliminary Results* PDM at 13, unchanged in the *Final Results*.

<sup>4</sup> See *Final Results of Redetermination on Remand Pursuant to Calcutta Seafoods Pvt. Ltd., Bay Seafood Pvt. Ltd., and Elque & Co. v. United States*, Court No. 19-00201, Slip. Op. 21-11 (CIT February 3, 2021), dated May 4, 2021 (Remand Redetermination).

<sup>5</sup> See *Calcutta Seafoods Pvt. Ltd., Bay Seafood Pvt. Ltd., and Elque & Co. v. United States*, Court No. 19-00201, Slip Op. 21-123 (CIT September 20, 2021).

## Timken Notice

In its decision in *Timken*,<sup>6</sup> as clarified by *Diamond Sawblades*,<sup>7</sup> the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Act, Commerce must publish a notice of court decision that is not “in harmony” with a Commerce determination and suspend liquidation of entries pending a “conclusive” court decision. The CIT’s September 20, 2021 judgment constitutes a final decision of the CIT that is not in harmony with Commerce’s *Final Results*. Thus, this notice is published in fulfillment of the publication requirements of *Timken*.

## Amended Final Results

Because there is now a final court judgment, Commerce is amending its *Final Results* with respect to the Elque Group and the non-examined companies subject to the review as follows:

<b>Producer/Exporter</b>	<b>Weighted-Average Dumping Margin (percent)</b>
Calcutta Seafoods Pvt. Ltd./Bay Seafood Pvt. Ltd./Elque & Co.	27.66
Review-Specific Average Rate Applicable to the Following Companies: <sup>8</sup>	
<b>Producer/Exporter</b>	<b>Weighted-Average Dumping Margin (percent)</b>
Blue-Fin Frozen Foods Pvt. Ltd.	6.13
Crystal Sea Foods Private Limited	6.13
Forstar Frozen Foods Pvt. Ltd.	6.13
Milsha Agro Exports Pvt. Ltd.	6.13

## Cash Deposit Requirements

Because Calcutta Seafoods Pvt. Ltd./ Bay Seafood Pvt. Ltd./ Elque & Co., Blue-Fin Frozen Foods Pvt. Ltd., Crystal Sea Foods Private Limited, and Forstar Frozen Foods Pvt. Ltd..

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<sup>6</sup> See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

<sup>7</sup> See *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

<sup>8</sup> This rate is based on the rates for the respondents that were selected for individual review, excluding rates that are zero, *de minimis*, or based entirely on facts available. See section 735(c)(5)(A) of the Act. See also Memorandum, “Remand Redetermination of the Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India: Calculation of the Cash Deposit Rate for Non-Reviewed Companies,” dated April 21, 2021; and *Final Results*, 84 FR at 57847.

have a superseding cash deposit rate, *i.e.*, there have been final results published in a subsequent administrative review, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). This notice will not affect the current cash deposit rate with respect to these companies.

With respect to Milsha Agro Exports Pvt. Ltd., Commerce will issue revised cash deposit instructions to CBP.

#### Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries that were produced and/or exported by Calcutta Seafoods Pvt. Ltd., Bay Seafood Pvt. Ltd., and Elque & Co. and were entered, or withdrawn from warehouse, for consumption during the period February 1, 2017, through January 31, 2018. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

In the event that the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess antidumping duties on unliquidated entries of subject merchandise produced and/or exported by Calcutta Seafoods Pvt. Ltd., Bay Seafood Pvt. Ltd., and Elque & Co. in accordance with 19 CFR 351.212(b). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate is not zero or *de minimis*. Where an importer-specific *ad valorem* assessment rate is zero or *de minimis*,<sup>9</sup> we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

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<sup>9</sup> See 19 CFR 351.106(c)(2).

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: September 24, 2021.

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Christian Marsh

Acting Assistant Secretary  
for Enforcement and Compliance

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